

CCRB INVESTIGATIVE RECOMMENDATION

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| Investigator: Laura Strauss | Team: Squad #05 | CCRB Case #: 202004048 | <input checked="" type="checkbox"/> Force <input type="checkbox"/> Discourt. <input type="checkbox"/> U.S. <input checked="" type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input checked="" type="checkbox"/> Injury |
| Incident Date(s) Tuesday, 06/02/2020 8:15 PM | Location of Incident: West Street and Morris Street (West Side Highway) | 18 Mo. SOL 5/4/2022 | Precinct: 01 |
| Date/Time CV Reported Mon, 06/08/2020 1:40 PM | CV Reported At: CCRB | How CV Reported: On-line website | Date/Time Received at CCRB Mon, 06/08/2020 1:40 PM |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
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| | | |

| Witness(es) | Home Address |
|-------------|--------------|
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| Subject Officer(s) | Shield | TaxID | Command |
|--------------------------|--------|--------|---------|
| 1. An officer | | | |
| 2. Officers | | | |
| 3. DT3 Jerome Victor | 7791 | 953528 | VED ZN2 |
| 4. LCD Michael Jennings | 00000 | 919213 | VED ZN2 |
| 5. DT3 Ruperto Valentin | 03799 | 927620 | VED ZN2 |
| 6. DT3 Anthony Fernandez | 2026 | 950401 | VED ZN2 |
| 7. DI Ronald Zedalis | 00000 | 927702 | C S O |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|---------------------------|-----------|--------|----------|
| 1. LCD William Buchanan | 00000 | 924993 | GVSD Z1 |
| 2. POM Jonathan Ku | 20058 | 951890 | SRG 4 |
| 3. DT3 Christophe Vickery | 07174 | 945079 | GVSD Z1 |
| 4. POF Crystal Washington | 20523 | 968187 | 040 PCT |
| 5. DT3 Joseph Spataro | 04892 | 945402 | VED ZN2 |
| 6. DT3 Jose Vargas | 06747 | 923299 | VED ZN1 |
| 7. DT3 Bekim Vucetaj | 5945 | 942679 | VED ZN1 |
| 8. DT3 Joseph Swicki | 6947 | 947528 | T.A.R.U |
| 9. Jim Conroy | | 337939 | LEG BUR |
| 10. SGT Anna Ruizwerkema | 01505 | 943944 | VED ZN1 |

| Officer(s) | Allegation | Investigator Recommendation |
|--------------------------|--|-----------------------------|
| A. Officers | Force: Officers struck individuals with batons. | |
| B. DT3 Anthony Fernandez | Force: Detective Anthony Fernandez struck § 87(2)(b) with a baton. | |

| Officer(s) | Allegation | Investigator Recommendation |
|-------------------------|---|-----------------------------|
| C.DT3 Anthony Fernandez | Force: Detective Anthony Fernandez used physical force against § 87(2)(b) | |
| D.DI Ronald Zedalis | Force: Deputy Inspector Ronald Zedalis used physical force against § 87(2)(b) | |
| E.DI Ronald Zedalis | Force: Deputy Inspector Ronald Zedalis struck § 87(2)(b) with a baton. | |
| F.LCD Michael Jennings | Force: Lieutenant Michael Jennings struck § 87(2)(b) with a baton. | |
| G.DT3 Ruperto Valentin | Force: Detective Ruperto Valentin struck § 87(2)(b) with a baton. | |
| H.DT3 Jerome Victor | Force: Detective Jerome Victor struck § 87(2)(b) with a baton. | |
| I. An officer | Force: An officer used physical force against § 87(2)(b) | |
| J. An officer | Abuse: An officer damaged § 87(2)(b) property. | |
| § 87(2)(g), § 87(4-b) | | |
| § 87(2)(g), § 87(4-b) | | |
| § 87(2)(g), § 87(4-b) | | |
| § 87(2)(g), § 87(4-b) | | |

Case Summary

On June 8, 2020, § 87(2)(b) and § 87(2)(b) filed duplicate complaints on the CCRB's website on behalf of § 87(2)(b) § 87(2)(b) and § 87(2)(b) were not present during the incident.

On June 2, 2020, § 87(2)(b) attended a Black Lives Matter protest at the West Side Highway in Manhattan. A Citywide curfew was in effect beginning at 8 p.m. At approximately 8:15 p.m., at West Street and Morris Street, officers advanced en masse and attempted to disperse the large group of protestors. Officers allegedly struck unidentified protestors with batons (**Allegation A: Force**, § 87(2)(g)). As § 87(2)(b) held his skateboard, Detective Anthony Fernandez, assigned to Vice Enforcement Division Zone 2, struck § 87(2)(b) left hand with his baton, which fractured a bone in § 87(2)(b) hand (**Allegation B: Force**, § 87(2)(g)). § 87(2)(b) ran away and was taken to the ground by Det. Fernandez and Deputy Inspector Ronald Zedalis, assigned to the Chief of Special Operations (**Allegations C-D: Force**, § 87(2)(g)). DI Zedalis, along with Lieutenant Michael Jennings and Detective Ruperto Valentin, both assigned to Vice Enforcement Division Zone 2, helped apprehend § 87(2)(b) and allegedly struck him with batons (**Allegation E: Force**, § 87(2)(g)). **Allegations F-G: Force**, § 87(2)(g)). Detective Jerome Victor, then assigned to Vice Enforcement Division Zone 2, struck § 87(2)(b) ankles with a baton (**Allegation H: Force**, § 87(2)(g)). An officer allegedly held his knee against the side of § 87(2)(b) head (**Allegation I: Force**, § 87(2)(g)). Officers allegedly struck § 87(2)(b) with batons after he was handcuffed (**Allegations E-G**), § 87(2)(b). § 87(2)(b) was taken to a prisoner van, where an officer allegedly cut off his backpack with a knife (**Allegation J: Abuse of Authority**, § 87(2)(g)). § 87(2)(g), § 87(4-b)).

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) was released with a summons for disorderly conduct (BR 01).

The investigation obtained two videos recorded by a journalist, § 87(2)(b) which were posted to § 87(2)(b) (BR 02-03), a cellphone video recorded by protestor § 87(2)(b) (BR 04), 27 BWC videos (relevant footage at BR 05 and BR 42), and handheld TARU video footage (BR 06), all of which are summarized at (BR 07-11). None of the subject officers were equipped with BWCs at the time of the incident.

This case was marked sensitive on July 15, 2020, following the § 87(2)(b) coverage of this incident (BR 12). The § 87(2)(b) article included a clip of § 87(2)(b) first video.

Patrol Borough Bronx, Patrol Borough Brooklyn South, and the Detective Bureau Investigations Unit conducted concurrent investigations. The Patrol Borough Bronx investigation was based upon a complaint that included a video of § 87(2)(b) arrest, but they did not ultimately investigate § 87(2)(b) incident. The Patrol Borough Brooklyn South investigation incorrectly identified the subject officer and closed their allegations as Unsubstantiated. In the Detective Bureau investigation, the allegations were closed as Exonerated and Information and Intelligence, and they determined that Det. Victor's use of force was within Department guidelines (BR 13).

This case was reassigned on July 7, 2020, from Inv. Whitney Beber to the undersigned after Inv. Beber's resignation from the CCRB. This investigation was delayed by the COVID-19 global pandemic and delays in scheduling officers for remote interviews.

§ 87(2)(g)

Findings and Recommendations

Allegation (A) Force: Officers struck individuals with batons.

§ 87(2)(b) testified (BR 14-15) that officers advanced and told the crowd to move back. Officers swung their batons at any protestors who did not move and “beat” them. § 87(2)(b) did not know or see what happened to cause the officers to start using force against protestors, and he could provide no further details about these individuals or the officers who used force against them. § 87(2)(b)

(a)

Lt. Jennings, Det. Fernandez, and DI Zedalis each denied or did not recall whether he or any officer employed baton strikes against any protestor (BR 17-19). Det. Victor did not observe any officers use baton strikes and solely acknowledged using three baton strikes against § 87(2)(b) (BR 20).

Police Officer Jonathan Ku of SRG 4 and Detective Joseph Spataro of Vice Enforcement Division Zone 2 were in the area during § 87(2)(b) arrest. PO Ku was initially interviewed for related protest case § 87(2)(g) and then later for this case (BR 22). Detectives Jose Vargas and Jose Vucetaj, of Vice Enforcement Division Zone 1, were assigned to the prisoner van to which § 87(2)(b) was brought after his arrest. Detective Joseph Swickicki of TARU recorded the protest with his handheld camera. PO Ku, Det. Spataro, Det. Vargas, Det. Vucetaj, and Det. Swickicki testified (BR 23-26) that they did not see or did not recall whether any officer used baton strikes.

Absent more detailed information about which officers used force against which civilians and in what context, the investigation was unable to determine whether there was any video footage depicting the uses of force described by § 87(2)(b)

The detail rosters (BR 27) did not include all officers assigned to the detail and did not document where and when officers were working. The summons log from the 1st Precinct on June 2, 2020, detailed that 123 individuals were issued summonses (BR 28). Without being able to narrow down the pool of potential officers, the investigation was unable to request additional documents to aid in identifying the alleged victims or the officers who allegedly used baton strikes.

Seven additional CCRB complaints were filed regarding this broader protest incident. Twenty-six baton strike allegations are being investigated among cases § 87(2)(b) 202004222, 202004232, 202004684, 202003978, and 202100268. Absent further information about the uses of force described by § 87(2)(b) the investigation was unable to determine whether any of those CCRB cases encompass this allegation.

§ 87(2)(g)

Allegation (B) Force: Detective Anthony Fernandez struck § 87(2)(b) with a baton.

§ 87(2)(b) testified that as officers advanced and swung their batons at him, he held his skateboard by his face and upper body to prevent himself from being hit. He did not swing his skateboard or attempt to use it as a weapon. As § 87(2)(b) held his skateboard, an officer, whom he described as a white male, in his mid-40s, about 5’10” tall, and wearing a blue uniform, struck his left hand with a baton. § 87(2)(b) could not clearly see the officer due to his riot helmet. The officer’s first baton strike broke § 87(2)(b) hand. § 87(2)(b) did not recall whether the officer attempted to strike him more than once.

§ 87(2)(b)

§ 87(2)(a)

§ 87(2)(b) records § 87(2)(b) note that he told medical personnel that police officers swung a baton and struck his hand. An X-ray of his left hand demonstrated that he sustained an acute fracture in his fifth metacarpal bone. § 87(2)(b) was treated with a splint to stabilize the fracture. His records from § 87(2)(b) show that an X-ray confirmed that his fifth metacarpal bone was fractured. Upon examination, over three subsequent follow-up visits, § 87(2)(b) had a decreased range of motion and decreased sensation at the tip of his finger. Photographs provided by § 87(2)(b) depict bruising and swelling to his left hand (BR 31-32) and his left arm wrapped in a cast (BR 33).

As will be explained below, Det. Fernandez did not recall whether he struck § 87(2)(b) with a baton. The investigation determined that Det. Fernandez struck § 87(2)(b) hand with a baton.

In PO Ku's BWC footage, at 01:57 and 02:10, the officer in the short-sleeved blue uniform is wearing a riot helmet with shield number 25542 (see screenshot image at BR 34). Det. Fernandez confirmed that was his shield number prior to his promotion to detective, and he confirmed that his riot helmet still bore that shield number during the incident. Det. Fernandez provided his height as 5'7" and weight as 170 pounds (BR 35). In PO Ku's BWC footage, Det. Fernandez is standing next to an officer in a short-sleeved white shirt, who was identified as Lt. Jennings. Lt. Jennings was assigned to the same command as Det. Fernandez, was Det. Fernandez's supervisor that day, and testified that he was with Det. Fernandez for most of the night. Lt. Jennings is 6'2" tall (BR 51) and the height of the officer standing next to him, whose helmet says 25542, is consistent with an officer who is 5'7" tall. Additionally, Det. Fernandez's build and complexion are consistent with the officer depicted in the video footage. Given all of the above, the investigation identified this officer as Det. Fernandez.

PO Ku's BWC footage shows this portion of § 87(2)(b) arrest (see screenshot images at BR 36). At 01:54, § 87(2)(b) is visible wearing black clothing and a white face covering and holding a skateboard. Det. Fernandez approaches § 87(2)(b) while holding a baton in his right hand. Det. Fernandez raises his right arm and extends his baton toward § 87(2)(b). At 01:58, Det. Fernandez raises his right arm a second time and moves his baton downward in a striking motion. § 87(2)(b) is not visible at that exact point, but a few seconds had elapsed since he was first approached by Det. Fernandez and his black Nike sneakers with white logos establish his presence. Due to the camera angle, it is not visible where or whether the baton makes contact with § 87(2)(b).

Det. Fernandez did not recall interacting with § 87(2)(b) and he testified that he had no independent recollection of striking any protester with his baton. He specifically denied, to the best of his recollection, that he struck a protester's hand with his baton. He recalled that multiple supervisors instructed officers to get into a line formation and disperse protestors away from the Brooklyn Battery Tunnel. A screenshot from PO Ku's BWC video (at BR 37) was presented, depicting him facing away from the camera, wearing a helmet with shield number 25542. Det. Fernandez initially identified that his shield number and helmet were depicted in the screenshot. He then stated that he was not certain if it was him, as some of the digits on the helmet were blurry and indistinct. Viewing the relevant portion of PO Ku's BWC footage did not refresh Det. Fernandez's recollection of his interaction with § 87(2)(b). He confirmed that he saw an officer in the footage

raising his baton and bringing it down in a striking motion, but he was not certain whether it was him. He maintained that he did not have any independent recollection of employing a baton strike.

Det. Victor testified that he saw DI Zedalis and one or two officers approach § 87(2)(b) a few yards ahead of him. The officers attempted to grab § 87(2)(b) arms and he pulled his arms away. Det. Victor did not know whether an officer struck § 87(2)(b) hand with a baton. It was possible that he did not witness the beginning of the interaction. After viewing PO Ku's BWC footage, Det. Victor stated that during the incident, he did not see an officer raise his baton and bring it down in a striking motion toward § 87(2)(b) given his distance.

DI Zedalis, Lt. Jennings, Det. Spataro, PO Ku, Det. Swicicki, Det. Vargas, and Det. Vucetaj testified that they did not recall this incident. Each denied seeing or did not recall whether an officer struck a protestor's hand with a baton. Lt. Jennings denied seeing Det. Fernandez strike a protestor with a baton. After viewing PO Ku's BWC footage, DI Zedalis, Lt. Jennings, Det. Spataro, PO Ku, and Det. Swicicki testified that they did not independently recall seeing an officer raise his baton and bring it down in a striking motion. Lt. Jennings recounted that he did not recall seeing Det. Fernandez at that point during the protest and did not know whether the officer depicted using a baton was Det. Fernandez.

Threat, Resistance, or Injury Reports were solely prepared by Det. Victor, which documented that a forcible takedown was used and that he used a straight baton against § 87(2)(b) (BR 38) No additional baton strikes or officers' names were documented in the TRI Reports.

Det. Fernandez did not deny striking a protestor with a baton and did not provide any explanation about what he was doing in the moment that BWC footage showed him raising a baton upward and bringing it down in a striking motion. The severity of § 87(2)(b) injury indicates that the strike was rendered with force sufficient to fracture his hand, which is also consistent with his hand being struck while he horizontally held his skateboard at chest-level. As such, given § 87(2)(b) documented injuries, § 87(2)(b) CCRB § 87(2)(a)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Officers may use force when it is reasonable to place a person in custody, to ensure the safety of themselves, and to protect other officers. Any use of force must be reasonable under the circumstances and not excessive. In determining whether the use of force is reasonable, relevant factors include the nature and severity of the crime, the actions taken by the subject, the immediacy of the perceived threat or harm to officers, whether the subject is actively resisting custody, and whether the subject is attempting to evade arrest by flight. Patrol Guide Procedure 221-01 (BR 39).

When officers initially approached § 87(2)(b) he was standing still and holding his skateboard in a stationary position. § 87(2)(b) was not suspected of committing a violent crime, and no officer recounted any specific safety concerns about § 87(2)(b) or alleged that he was physically aggressive. All available evidence indicated that § 87(2)(b) was not given a chance to comply with the officers prior to the use of force and that he was not fleeing or resisting at that point. Thus, the use of force was not reasonable under the circumstances. Det. Fernandez's baton strike to § 87(2)(b) hand directly caused a substantial injury and was manifestly excessive. Further, even if Det. Fernandez did not intend to strike § 87(2)(b) hand, it was a foreseeable outcome of swinging his baton at a stationary protestor who was holding an object at chest-level. § 87(2)(g)

Allegation (C) Force: Detective Anthony Fernandez used physical force against § 87(2)(b)

Allegation (D) Force: Deputy Inspector Ronald Zedalis used physical force against § 87(2)(b)

§ 87(2)(b) testified that he began running away once Det. Fernandez struck him and as additional officers were swinging their batons at him. A white-shirted officer then grabbed his backpack and tackled him from behind. § 87(2)(b) did not hear any officer issue him instructions before he was tackled. He fell over and landed on his right side. § 87(2)(b) did not move around or resist. § 87(2)(b) did not swing, hit the officer, or do anything to provoke him. § 87(2)(a)

§ 87(2)(b) recounted (BR 40) that he saw several officers tackle § 87(2)(b) to the ground from his vantage point approximately 15 feet away. The officers grabbed § 87(2)(b) by his upper body and brought him to the ground, where he landed forcefully, possibly face down. § 87(2)(b) then began filming the interaction. § 87(2)(b) did not see what, if anything, led to the interaction.

As will be explained below, Det. Fernandez and DI Zedalis did not recall whether they took § 87(2)(b) to the ground. The investigation determined that they both used a forcible takedown against § 87(2)(b)

DI Zedalis is depicted walking in the protest in § 87(2)(b) cell phone video (BR 04, at 02:32). His shield and collar insignia identify him as a deputy inspector. He is wearing a black helmet, long-sleeved white shirt, black rubber gloves, has a radio affixed to his left shoulder, and has zip ties affixed to his right hip with a carabiner (see screenshot at BR 41). In PO Pascale's BWC footage (BR 42, at 01:06), DI Zedalis is wearing the same white shirt and black gloves, has the same shield and collar insignia, has a radio affixed to his left shoulder, and has a Special Operations Division patch on his left sleeve. DI Zedalis was the only deputy inspector assigned to Special Operations and his MOS photograph (BR 43) confirmed that he was the officer depicted in the footage. In PO Ku's BWC footage, which depicts § 87(2)(b) arrest, the officer in a long-sleeved white shirt (BR 05, at 02:01) has zip ties affixed to his right hip with a carabiner. § 87(2)(b) cell phone video (BR 04, at 01:04) depicts a continuation of § 87(2)(b) arrest, wherein the same officer – dressed in a white long-sleeved shirt, wearing a black helmet and black gloves, with zip ties affixed to his right hip with a carabiner – is attempting to handcuff § 87(2)(b). Additionally, the officer effecting § 87(2)(b) arrest has a consistent height, build, and complexion as the officer depicted in the first two videos discussed. Given all of the above, the investigation identified this officer as DI Zedalis.

In PO Ku's BWC footage (BR 05, at 01:54), § 87(2)(b) is standing and holding a skateboard. Lt. Jennings is visible at 01:56, but he does not assist with § 87(2)(b) arrest during this part of the incident. At 02:01, DI Zedalis runs toward § 87(2)(b) on the left side of the screen. Det. Fernandez also runs toward § 87(2)(b). § 87(2)(b) is not visible at this point. At 02:06, DI Zedalis and Det. Fernandez grab § 87(2)(b), swing him around, and take him to the ground (see screenshot images at BR 44). Due to the camera angle and speed, there is not a comprehensive view of the takedown. § 87(2)(b) is on the ground at 02:08, established by his black Nike sneakers with white logos. Throughout this time frame, no commands or conversation between § 87(2)(b) and officers is audible, given the loud surroundings and distance from which PO Ku is located.

Det. Fernandez testified that he did not recall assisting with effecting any arrests and he did not recall seeing a protestor attempt to flee from officers. Det. Fernandez did not recall taking a

protestor to the ground. DI Zedalis recounted that he may have guided a protestor down to the ground during the incident, but he was unable to describe any of those instances. Neither Det. Fernandez nor DI Zedalis recalled § 87(2)(b) or had any recollection of this incident. PO Ku's BWC footage did not refresh Det. Fernandez's or DI Zedalis' recollection, and they were both unable to identify whether they were depicted in the footage. Both officers maintained that they did not recall taking § 87(2)(b) down to the ground.

Det. Victor recounted that he saw DI Zedalis attempting to arrest § 87(2)(b) a few yards ahead of him. DI Zedalis and one or two officers approached § 87(2)(b) who was standing in the street. The officers attempted to grab § 87(2)(b) arms, but he pulled his arms away. After struggling with § 87(2)(b) for approximately 30 seconds, the officers took him down to the ground. The takedown happened quickly, and Det. Victor could not describe how it was conducted. § 87(2)(b) landed on the ground face down on his stomach.

Lt. Jennings, Det. Spataro, PO Ku, Det. Swicicki, Det. Vargas, and Det. Vucetaj did not recall this incident. Det. Spataro and PO Ku recounted that they saw several officers who took protestors down to the ground during the protest but were unable to provide further details about the takedowns. Lt. Jennings, Det. Swicicki, Det. Vargas, and Det. Vucetaj testified that they did not see any officers take any individuals to the ground. After viewing PO Ku's BWC footage, Lt. Jennings, Det. Spataro, PO Ku, and Det. Swicicki did not independently recall seeing officers take § 87(2)(b) down to the ground.

Threat, Resistance, or Injury Reports were solely prepared by Det. Victor, which documented that a forcible takedown was used and that he used a straight baton against § 87(2)(b) (BR 38). The takedown was only noted under the section listing all force used by all members of service involved, and no specific information was conveyed about the takedown. No other officers were listed on the TRI.

Officers may use force when it is reasonable to place a person in custody, to ensure the safety of themselves, and to protect other officers. Any use of force must be reasonable under the circumstances and not excessive. In determining whether the use of force is reasonable, relevant factors include the nature and severity of the crime, the actions taken by the subject, the immediacy of the perceived threat or harm to officers, whether the subject is actively resisting custody, and whether the subject is attempting to evade arrest by flight. Patrol Guide Procedure 221-01 (BR 39).

DI Zedalis and Det. Fernandez did not recall the incident with § 87(2)(b) and therefore did not testify to what commands, if any, they issued him, how he reacted when they grabbed him, whether they perceived § 87(2)(b) as a threat, or whether they gave § 87(2)(b) a chance to comply prior to using force. Video footage did not offer a comprehensive view of this incident and, as such, none of those factors were depicted or could be ascertained from the video. Though § 87(2)(b) acknowledged running after he was struck with a baton, it remains uncertain as to whether he knew that he was fleeing from officers who were attempting to place him under arrest. Although Det. Victor testified that § 87(2)(b) pulled his arms away from officers, § 87(2)(b) testified that he was unexpectedly tackled to the ground from behind. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (E) Force: Deputy Inspector Ronald Zedalis struck § 87(2)(b) with a baton.

Allegation (F) Force: Lieutenant Michael Jennings struck § 87(2)(b) with a baton.

Allegation (G) Force: Detective Ruperto Valentin struck § 87(2)(b) with a baton.

§ 87(2)(b) testified that he landed on his right side and his right arm was pinned underneath him after officers tackled him to the ground. Four or five officers held him down and repeatedly struck him with batons. § 87(2)(b) could not see who struck him because he was lying facedown. Officers struck him with batons between 15 and 20 times, primarily on his left arm and the back of his legs. Officers, whom § 87(2)(b) could not see, zip-tied him and then continued to strike his legs with batons. After viewing § 87(2)(b) cell phone video (BR 02), § 87(2)(b) explained that the video depicted the end of the incident and he was struck with batons several times prior to the portion of the incident that was recorded. He sustained bruises on his legs and left arm from the baton strikes.

§ 87(2)(b) medical appointments were focused on his hand injury and his records do not document bruising to his legs or left arm. § 87(2)(b) did not provide any photographs depicting these injuries.

§ 87(2)(a)

§ 87(2)(b) stated that he observed only one officer repeatedly strike the back of § 87(2)(b) legs with a baton, in the area of his calves Achilles tendons. § 87(2)(b) captured these strikes in his video footage. § 87(2)(b) did not see any other officer strike § 87(2)(b) with a baton, though he noted it was possible that he simply did not happen to see that take place. § 87(2)(b) then left the scene and did not see what happened afterward.

Portions of § 87(2)(b) arrest were not captured on video. PO Ku's BWC footage (BR 05) depicted two officers taking § 87(2)(b) to the ground. § 87(2)(b) video footage (BR 04, at 01:04) and § 87(2)(b) video footage (BR 02, at 00:23) began as several officers were already handcuffing § 87(2)(b) on the ground. Aside from Det. Victor, no other officer was depicted striking § 87(2)(b) with a baton. However, an unknown period of time elapsed between PO Ku's BWC footage and the two cellphone videos described. § 87(2)(b) second cellphone video (BR 03) briefly showed § 87(2)(b) lying on the ground after he was handcuffed, with Det. Victor kneeling on § 87(2)(b) legs. Video footage did not show an officer strike § 87(2)(b) with a baton after he was handcuffed, but it was unclear how much time elapsed between the conclusion of the two initial cellphone videos and the beginning of § 87(2)(b) second video. § 87(2)(b) second cellphone video did not show the conclusion of officers' interactions with § 87(2)(b) as § 87(2)(b) is still lying on the ground when the video ends.

Det. Victor recounted that as he, DI Zedalis, and two additional officers tried to handcuff § 87(2)(b) § 87(2)(b) moved around, pulled his arms away, and kicked his legs. Det. Victor struck § 87(2)(b) ankles three times with his baton (see Allegation H). Det. Victor did not see any other officer strike § 87(2)(b) with a baton.

Lt. Jennings, DI Zedalis, Det. Fernandez, Det. Spataro, PO Ku, Det. Swicki, Det. Vargas, and Det. Vucetaj did not recall this incident. Lt. Jennings recounted that he assisted officers with several arrests, which included restraining arrestees to ensure that officers were not injured. Lt. Jennings

did not recall whether he struck a protestor with a baton. Lt. Jennings did not see any officer strike a protestor with a baton. After viewing video footage, Lt. Jennings confirmed that the video depicted him assisting with § 87(2)(b) arrest by trying to prevent § 87(2)(b) from moving around. Lt. Jennings did not independently recall the arrest and could not recount any specific details about it.

DI Zedalis testified that he did not strike any protestor with a baton, and that he did not recall seeing any officer strike a protestor with a baton. He was not equipped with a baton at the time. Video footage did not refresh DI Zedalis' recollection about his involvement in § 87(2)(b) arrest. He was unable to confirm whether he was depicted in any of the video footage depicting § 87(2)(b) arrest.

Det. Fernandez, Det. Spataro, PO Ku, Det. Swicicki, Det. Vargas, and Det. Vucetaj each denied seeing or did not recall whether any officer employed baton strikes. § 87(2)(g)

Threat, Resistance, or Injury Reports were solely prepared by Det. Victor, which documented that a forcible takedown was used and that he used a straight baton against § 87(2)(b) to overcome resistance (BR 38). No additional baton strikes or officers' names are documented in the TRIs.

Though BWC footage does not show DI Zedalis, Lt. Jennings, or Det. Valentin striking § 87(2)(b) with batons, the footage does not provide a comprehensive view of the incident, and portions of the incident are not depicted in any video footage. As a result, the investigation could not rule out the possibility that officers struck § 87(2)(b) with batons in the periods that are not captured in the footage. § 87(2)(g)

Allegation (H) Force: Detective Jerome Victor struck § 87(2)(b) with a baton.

It is undisputed that Det. Victor struck § 87(2)(b) ankles with a baton three times.

§ 87(2)(b) testified officers told him to show his hands once he was on the ground, but his arm was pinned beneath him and he could not move it. Four or five officers then repeatedly struck him with batons, primarily on his left arm and the back of his legs. § 87(2)(b) could not see which officers struck him with batons. § 87(2)(a)

§ 87(2)(b) medical appointments were focused on his hand injury and his records do not document bruising to his legs or left arm. § 87(2)(b) did not provide any photographs depicting these injuries.

§ 87(2)(b) recounted that several officers pinned § 87(2)(b) body to the ground and attempted to handcuff him. An officer knelt on the ground, held § 87(2)(b) legs with one hand, and repeatedly struck the back of § 87(2)(b) legs, near his calves, with a baton. It did not appear that § 87(2)(b) was resisting, and he had not yet been handcuffed. These baton strikes were depicted in the cellphone video that § 87(2)(b) posted to § 87(2)(b)

§ 87(2)(b) video footage (BR 02, at 00:25) and § 87(2)(b) video footage (BR 04, at 01:09) capture Det. Victor's baton strikes to § 87(2)(b) legs. In sum, the footage shows Det. Victor restrain § 87(2)(b) lower legs by kneeling on them, while DI Zedalis is straddling § 87(2)(b) lower back. DI Zedalis and three other officers attempt to restrain and handcuff § 87(2)(b) who is lying face down on the ground. § 87(2)(b) moves his lower legs upward, which causes Det. Victor to lose his grasp on § 87(2)(b) legs. § 87(2)(b) legs do not appear to hit any officer. § 87(2)(b) continually moves around, and the officers are unable to handcuff him. Det. Victor, while standing upright and leaning over, strikes § 87(2)(b) lower legs twice with his baton. He then kneels and uses one less forceful strike to § 87(2)(b) legs.

Det. Victor's testimony was consistent with video footage. He recounted that he attempted to restrain § 87(2)(b) legs with his hands, but he was unable to gain control because § 87(2)(b) moved around and kicked. Det. Victor did not issue any commands to § 87(2)(b). Det. Victor then struck § 87(2)(b) legs with his baton three times. His baton hit the back of § 87(2)(b) ankles, near his calves. Det. Victor initially used two consecutive baton strikes. He gained control of § 87(2)(b) left leg, but § 87(2)(b) still kicked with his right leg. Det. Victor then struck § 87(2)(b) right leg with his baton with one less forceful "small strike." Det. Victor knelt on both of § 87(2)(b) legs and remained there until DI Zedalis zip-tied § 87(2)(b). Det. Victor solely struck § 87(2)(b) leg muscle and his baton did not make contact with any bones. Det. Victor chose to use his baton because it was the minimum amount of force needed to gain control of § 87(2)(b).

TRI Reports prepared by Det. Victor (BR 38) document that he used an impact weapon to overcome active resistance. § 87(2)(b) resisted by kicking his legs and Det. Victor used a straight baton to overcome resistance and effect § 87(2)(b) arrest.

Lt. Jennings, DI Zedalis, Det. Fernandez, Det. Spataro, PO Ku, Det. Swickicki, Det. Vargas, and Det. Vucetaj each denied seeing or did not recall whether any officer employed baton strikes against a protestor. After viewing video footage, the officers testified that they did not independently recall seeing an officer use a baton strike against § 87(2)(b).

Officers may use force when it is reasonable to place a person in custody, to ensure the safety of themselves, and to protect other officers. Any use of force must be reasonable under the circumstances and not excessive. In determining whether the use of force is reasonable, relevant factors include the nature and severity of the crime, the actions taken by the subject, the immediacy of the perceived threat or harm to officers, whether the subject is actively resisting custody, and whether the subject is attempting to evade arrest by flight. Patrol Guide Procedure 221-01 (BR 39). Officers are instructed to apply no more than the reasonable force *necessary* to gain control. Patrol Guide Procedure 221-02 (BR 45) (emphasis added).

§ 87(2)(g) However, given that § 87(2)(b) was not suspected of committing a violent crime, that Det. Victor did not articulate that he perceived § 87(2)(b) as a threat, that Det. Victor did not recount seeing § 87(2)(b) flee or run away from officers, that DI Zedalis had § 87(2)(b) restrained so that he could not get up, and four additional officers were attempting to handcuff § 87(2)(b)

§ 87(2)(g)

Allegation (I) Force: An officer used physical force against § 87(2)(b).

§ 87(2)(b) testified that, while he was on the ground, an officer held his knee to the side of his head, which caused § 87(2)(b) nose to bleed. § 87(2)(b) could not describe the officer. § 87(2)(a)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) medical appointments were focused on his hand injury and his records do not document these injuries. § 87(2)(b) provided a photograph of an abrasion on his nose (BR 46).

§ 87(2)(b) and § 87(2)(b) video footage, both of which depict § 87(2)(b) being handcuffed on the ground, do not show an officer with his knee against § 87(2)(b) head. As discussed, segments of § 87(2)(b) arrest are not captured in any video footage obtained by the investigation. As the cameras in § 87(2)(b) cellphone video (BR 04, at 01:04) and § 87(2)(b) cellphone video (BR 02, at 00:23) pan toward § 87(2)(b) arrest, he is already on the ground with several officers attempting to handcuff him. Though no officer is depicted with his or her knee against § 87(2)(b) head, the video footage does not capture a comprehensive view of the arrest.

None of the officers on scene who were interviewed described seeing or were otherwise able to account for whether an officer placed his knee on § 87(2)(b) head. They did not observe any physical injuries sustained by § 87(2)(b) or any protestor. Det. Victor, who was in the prisoner van with § 87(2)(b) did not observe any injuries that he sustained, and § 87(2)(b) did not mention any injuries.

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (J) Abuse of Authority: An officer damaged § 87(2)(b) property.

§ 87(2)(b) testified that while he was inside a prisoner van, an officer cut off the straps of his backpack with a knife because the backpack could not be removed while his hands were zip-tied. § 87(2)(b) described the officer as a white male, approximately 35 years old, possibly bald, and “ugly.” Det. Victor, four to five additional officers, arrestee § 87(2)(b) and two unidentified arrestees were inside the van. § 87(2)(a)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

The investigation was unable to reach § 87(2)(b) and could not identify the other two arrestees who were in the prisoner van with § 87(2)(b)

Det. Victor testified that § 87(2)(b) was already seated inside the van when he first approached. He initially thought that SRG officers would handle § 87(2)(b) arrest, but a supervisor instructed him to write a summons for § 87(2)(b). Det. Victor did not see any officer cut the straps of § 87(2)(b) backpack. Det. Spataro, who was also present at the van, testified that his attention was focused on his arrestee, § 87(2)(b) and he did not recall anything that happened with § 87(2)(b). Det. Spataro did not recall cutting off an arrestee’s backpack straps or seeing any officer do so.

Det. Vargas and Det. Vucetaj recounted that four apprehended individuals were brought to the prisoner van, but neither had a specific recollection of § 87(2)(b). Both officers testified that they did not remove an arrestee’s backpack by cutting off the backpack straps, nor did they see any

officer do so. No documentation was prepared because the arrestees were ultimately released from the location.

The investigation was unable to identify any video footage depicting this portion of the incident. Det. Victor, Det. Spataro, Det. Vargas, and Det. Vucetaj, all of whom were at the prisoner van, were not assigned BWCs at the time of the incident.

Neither Det. Vargas nor Det. Vucetaj documented in their memo books the names of any officers or arrestees who were at the prisoner van (BR 48-49). The investigation was unable to identify any documentation related to the individuals or officers who were at the prisoner van with § 87(2)(b). The summons log from the 1st Precinct (BR 28) detailed that 123 individuals were issued summonses, the majority of which were for infractions committed in the vicinity of West Street. Absent additional information about the two remaining arrestees who were in the prisoner van with § 87(2)(b), the investigation was unable to identify them. The detail roster from this protest (BR 27) did not detail a large majority of officers who responded to this protest. Given § 87(2)(b) physical description of the subject officer, which potentially matches a vast number of police officers, the investigation could not narrow down the pool of potential subject officers.

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 50).

- Det. Victor has been a member of the NYPD for nine years and has been a subject in two CCRB complaints and two allegations, neither of which was substantiated. § 87(2)(g)
- Det. Fernandez has been a member of the NYPD for ten years and has been a subject in four CCRB complaints and 10 allegations, of which two were substantiated:
 - 201503335 involved substantiated allegations of a frisk and improper summons against Det. Fernandez. The Board recommended Command Discipline A and the NYPD imposed Command Discipline A.
 - § 87(2)(g)
- DI Zedalis has been a member of the NYPD for 20 years and has been a subject in two CCRB complaints and five allegations, none of which were substantiated. § 87(2)(g)
- Lt. Jennings was a member of the NYPD for 23 years and was a subject in five CCRB complaints and nine allegations, none of which were substantiated. § 87(2)(g)
- Det. Valentin was a member of the NYPD for 20 years and was a subject in one CCRB complaint and two allegations, neither of which was substantiated. § 87(2)(g)

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- § 87(2)(b) filed a Notice of Claim with the City of New York claiming physical injuries (broken left hand, laceration to nose, bruising to left arm, bruising to legs), emotional damages, and a violation of his constitutional rights, and is seeking an amount to be decided by a jury as redress. § 87(2)(b)
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 5

Investigator: Laura Strauss Inv. Laura Strauss September 23, 2021
Signature Print Title & Name Date

Squad Leader: Daniel Giansante IM Daniel Giansante September 24, 2021
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date